

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member,
Sh. Sudhir Kumar, Judicial Member**

ITA No. 2636/Del/2022 : Asstt. Year: 2021-22

Mahavir Transmission Ltd., 7/33, Ansari Road, Darya Ganj, New Delhi-110002 (APPELLANT)	Vs	DCIT, Central Circle-25, New Delhi (RESPONDENT)
PAN No. AAACF2079H		

**Assessee by : Sh. Ved Jain, Adv. &
Ms. Supriya Mehta, CA
Revenue by : Subhra J. Chakraborty, CIT-DR**

Date of Hearing: 14.05.2024	Date of Pronouncement: 02.08.2024
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-29, New Delhi dated 21.09.2022.

2. Following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, learned CIT (A) has erred, both on facts and in law, in rejecting the contention of assessee that the assessment order passed is bad in the eyes of law as the same was passed in violation of circular no. 19/2019 issued by CBDT which mandates that no order shall be passed without there being Valid Document Identification Number (DIN).

3. On the facts and circumstances of the case, learned CIT (A) has erred, both on facts and in law, in rejecting the contention of assessee that the assessment order passed is bad in the

eyes of law as the same was passed undated & not digitally signed.

4. (1) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the proceedings initiated under section 153A against the appellant and the consequent reassessment framed under section 153A r.w.s. 143(3) are in violation of mandatory provisions of Section 153D of the Act and as such the same is bad in eyes of law.

(ii) That the CIT(A) has erred in ignoring the contention of the assessee that the purported approval u/s 153D of the Act is illegal, bad in law and also without any application of mind.

5. (i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of Rs.4,82,58,537/- made on account of excess stock found during search.

(ii) That the addition made by Ld. AO and sustained by Ld. CIT(A) by invoking the provision of Section 69C is legally untenable in the absence of any evidence that the assessee has incurred any unexplained expenditure during the year.

(iii) That the abovesaid addition has been confirmed by arbitrarily ignoring detailed explanation and evidences submitted by the assessee in support of its contention.

(iv) That the abovesaid addition has been confirmed despite the fact that no defect has been found in the books of accounts of the assessee and the books of accounts of the assessee have been duly audited by a Chartered Accountant.

6. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in ignoring the fact that stock is to be valued at lower of cost or net realizable value and not at the market value.

7. (i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in sustaining the addition made by Ld. AO ignoring the quantitative reconciliation submitted by the assessee.

(ii) That the addition on account of excess stock is unsustainable in the absence of any evidence of sales/purchases outside the books of accounts being found during the course of search.

(iii) That the abovesaid addition on the basis of estimation of stock is unsustainable in the absence of any actual measurement being conducted by the search party.

8. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the action of the AO in wrongly charging interest under section 234B of the Income Tax Act."

Addition on account of excess stock found during search:

3. Brief facts of the case are that a search was carried out at the premises of the assessee on 23.03.2021. During the course of the search, an inventory of the stock was prepared by the Authorized Officer on 24.03.2021. The said inventory is quoted by the AO in the Assessment Order at Pages 3 onwards. The AO determined the excess stock after comparing it with the books stock. While making the addition, the AO has also relied on the statement of Sh. Subhash Singh, General Manager of the company and Sh. Akshat Jain, Director of the company.

4. The relevant part of the Assessment Order on this issue is as under:

"6. The submission of the assessee duly considered but not found tenable as the assessee has failed to justify the variation in the stock with corroborative evidence. As, during the course of search, Sh. Subhash Singh, the General Manager of the factory in his statement recorded u/s 132(4) of the Act had failed to explain the discrepancy and duly acknowledged that 'the physical stock taken was appropriate and was taken with the help of my team. Besides, Sh. Akshat Jain, Director of the assessee company also could not explain the difference in stock as found physically in search operation and in the books of accounts of M/s Mahavir Transmission Ltd.

In this regard, It is pertinent to mention that assessee has not rebutted the presumption given u/s 132(4A) of the Income Tax Act, 1961 which read as under:

"(44) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the

possession or control of any person in the course of a search, it may be presumed-

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person,

(ii) that the contents of such books of account and other documents are true, and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested."

32 The reliance in this regard can be placed upon the decision of Hon'ble Jurisdictional High Court of Delhi in the case of CIT Vs. Naresh Kumar Aggarwala (ITA No. 225/2004). Further, reference can be drawn from the decision of Hon'ble High Court of Jharkhand in the case of Mahabir Prasad Rungta vs. Commissioner of Income-tax (Appeals), Ranchi tax appeal No. 19/2002 dated 09.01.2014. The reference can also be drawn from the decision of Hon'ble High Court of Madras in the case of Commissioner of Income-tax vs. Ambika Appalam Depot, tax case (appeal) No. 151/2008 dated 07.07.2011.

Accordingly addition of Rs. 4,82,58,536.83/- on account of excess stock found during the course of search is added to the income of the assessee. Provisions of section 115BBE is also invoked on this addition."

5. The Id. CIT(A) affirmed the action of the AO on the grounds that the statement of Sh. Subhash Singh, General Manager of the company and Sh. Akshat Jain, Director of the company recorded cannot be ignored and

the search team has done a very diligent task and has taken the inventory of raw material, finished goods stock wise and also scrap. The relevant part of the order of the Id. CIT(A) is as under:

"9.6 I have carefully considered the discrepancy of stock which has been lucidly mentioned in the assessment order, the statement of Sh. Subhash Singh, General Manager and the statement of Sh. Akshat Jain. From the charts as reproduced above, it is seen that the search team has done a very diligent task and has taken the inventory of raw material, finished goods: product wise, scrap etc. During the course of search at the factory, statement of Shri Subhash Singh, General Manager, was recorded under section 132(4) of the income Tax Act wherein he categorically stated that he was unable to explain the discrepancy in the stock. He also confirmed that the physical stock taken was appropriate and was taken with the help of his team. The said statement of Shri Hubhash Singh was not retracted post search. Also the statement of Sh. Akshat Jain was recorded u/s 131(1A) of Income Tax Act, 1981 and he was specifically asked to explain the difference in stock as found physically during search operation and in the books of accounts of the appellant, to which he was not able to give any Justifiable and satisfactory reply. The appellant during the appellate proceedings has taken pleas that there was no complete entry of goods in the books of the assessee, that classification of the goods was not done properly by the search team, the valuation was not proper and also that the general manager Shri Subhash Singh was not the qualified person to undertake the stock taking exercise. The above submissions of the appellant are not convincing. If the General Manager Shri Subhash Singh was not qualified for the stock taking exercise, the fact should have been clearly communicated to the search team. Since he was the general Manager, he should have had deputed the qualified official to help the search to inventory taking and valuation. Also, as General Manager he was well aware of the entry of goods in the books and he should have specified it to search team in his statement u/s 132(4) of the Act. More important is the fact that the statement of Sh. Subhash Singh made u/s 132(4) of the Act was not retracted. In view of the factual discrepancy of stock being found during the

course of search and the statement of the General Manager Sh. Subhash Singh u/s 132(4) of the Act, it is concluded that the AO has correctly made the addition of Rs.4,82,58,537/- which is confirmed. Accordingly these grounds of appeal are dismissed.”

6. Aggrieved, the assessee filed appeal before the Tribunal.
7. Before us, the Id. AR relied on the submissions made before the revenue and argued that the submissions of the assessee have not been examined or not been rebutted but the addition has been made and confirmed solely based on the statement recorded during the search ignoring the factual material on record.
8. On the other hand, the Id. DR supported the orders of the authorities below.
9. Heard the arguments of both the parties and perused the material available on record.
10. As per the material available before the revenue authorities, the material first enters in the plant and then as per store manpower availability gets unload the same day or in a couple of days. After the unloading, store in-charge verifies the same for weight and quantity measurements. After store approval, quality team inspects the material for quality. Thereafter, both the teams convey to the factory Accounts Department which tallies the quantity and quality with the suppliers bills. Various details in the bill such as GST number, name, computation, etc. are checked and verified. Finally, the bill is couriered or hand-delivered to Noida Head Office from Sikandrabad unit where all details are checked again and further it is checked by the Purchase Department and tallied with the order placed by the assessee. In case of any discrepancy, the bill

approval and subsequent entry in the books is held up till the issue is resolved or the material is rejected. This entire process takes time, ranging from a couple of days up to a week depending on the case to case basis. Based on this process of updating the stock register, the material unloaded upto 24.03.2021 could not be entered into the books of account at Noida office because of the search & seizure activities being carried on during that period. The assessee filed the quantitative details of the stock updating the stock upto 24.03.2021, since the stock taking exercise was done on 24.03.2021 and not on 22.02.2021 i.e. the date of the stock summary ledger used by the search team for making comparison and drawing adverse inference. Aluminium as per the physical inventory done on 24.03.2021 by the search team was found out to be 1405,381 Kg. Aluminium as per assessee's books of accounts in coming to be 1443,641 Kg. As per the Revenue, the goods are quantified on the basis of finished goods being product category such as Dog, Panther and Zebra, etc. and raw material being Steel Wire, Steel Core Wire, Aluminium, Low Grade Aluminium scrap, Aluminium wire and HLPC and PVC, etc. The search party took the stock by the description on the cartoons such as Dog, Panther and Zebra whereas the same contents can be a part of stock of Aluminium wire, rod and sheets mentioned in the raw material. Similarly, the production of the material during the two days of search has not been entered in the books but has been valued by the search party. The inventory has been prepared not based on the material but based on the description of the finished product. Further, Shri Subhash Singh in his statement has confirmed the fact that stock was being maintained at the Head Office at C-58, Sector 4, Noida, not at the plant level. Shri Subhash Singh was confronted with the accounts stock ledger at Sikandrabad and was asked to identify and quantify the material. He pointed out all the material as per the accounts stock ledger provided to him by the search

team. This is also one of the reasons why the plant General Manager was not able to give a satisfactory reply on the stock. Similarly, it is difficult to distinguish between aluminium scrap 86%, aluminium scrap (low grade) and aluminium scrap. Shri Subhash Singh was not involved in day to day stock taking, manufacturing and technical aspects of the plant. Also in the statement he has slated that he mainly looks after plant administration, government liaisons and compliances. Similarly, Sh. Akshat Jain, the Director stated in the statement that he needs to check the difference for reconciliation. However, the Assessing Officer has made the addition solely on the basis of statement recorded of Sh. Akshat Jain and Sh. Subhash Singh. Similarly, the inventorisation of the scrap has been done on estimate basis. The goods received during the period of search have not been entered in books and also the final product which has been manufacture and ready for sale was also not entered in the books. Hence, there was a difference to the tune of raw material received as well as the finished goods ready for dispatch which has been available at the premises but not entered in the books of accounts. These finished goods pointed out by the AO represent the production which has been done by the unit and which were ready for subsequent sales as on 24.03.2021. These were not unaccounted stock but the finished goods produced out of the raw material which were duly accounted for. Accordingly, these finished goods and the raw material received were not part of the stock inventory as per books of accounts. At the time of issue for sale, the entry is passed in the stock account whereby the raw material is reduced as consumed and corresponding entry of finished goods produced is recorded with the simultaneous issue of finished goods against the sale invoice. This is the normal accounting practice of stock in any manufacturing unit. The Assessing Officer has straightaway picked up the total quantity of finished goods as on 24.03.2021 and added the same as unaccounted stock

ignoring the fact of corresponding raw material being available in the books of accounts. The Assessing Officer has not disputed the details and reconciliation submitted by the assessee including the quantity analysis in this regard. The addition made by the AO and sustained by the Id. CIT(A) are due to the misinterpretation of the accounting system of finished goods and solely based on the statements recorded without any corroborative evidence of unaccounted sales. It is important to point out that nothing incriminating regarding any purchase or sales outside the books of accounts was found. Hence, the addition made on account of excess stock cannot be sustained.

11. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 02/08/2024.

Sd/-

(Sudhir Kumar)
Judicial Member

Dated: 02/08/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR